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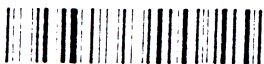
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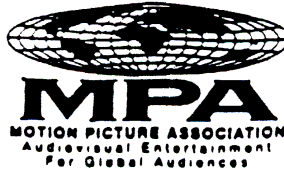
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1600 EYE STREET NW
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JACK VALENTI
CHAIRMAN
AND
CHIEF EXECUTIVE OFFICER

TELEPHONE: 202/293-1966
TELECOPIER: 202/452-9823
INTERNET: jvaleno@mpaa.org

March 16, 2000

Dear Denise Caruso

I read your article in the March 13th issue of the New York TIMES with mounting interest. It was both readable and substantive about an issue which swarms in complexity and, alas, misunderstood not only by the public, but by professionals as well.

I am not asking that this be published. Rather it is designed to offer you some views which are counter to those of Professor Lessig and others. I hope that is suitable to you.

First, fair use. The movie industry doesn't seek to eliminate the Fair Use Doctrine. That Doctrine was constructed to make it easier for research, scholarship, commentary and similar uses which do not harm the economic interests of copyright owners. Fair use does not endorse unrestricted copying of any movie or a book simply because it is more convenient than purchasing a copy. Indeed, it is prohibited. When the Digital Millenium Copyright Act was being debated, schools, universities, libraries, consumers and just about every other group interested in Fair Use were part of the long discussions. Their concerns were fixed in the legislation.

Second, as you know, users of the Linux system are now able to play DVDs on that system because a Linux application has been licensed under the same terms and conditions that Windows and other software applications were licensed.

Third, In the celebrated Betamax case decided by the Supreme Court some 17 years ago, 'time shifting' was allowed, that is, a cable subscriber could copy on his VCR a movie shown on either the basic channels or a premium pay channel (HBO, Showtime, etc.) in order to be able to view it at an hour different from its original time period. The Court did not approve copying beyond that. When you wrote that "the content industry's traditional method dealing with these challenges -- trying to extinguish or suppress new technologies -- did not work with the introduction of videocassettes," I must suggest that is not so. The Betamax controversy was *not* about suppressing new technology. Far from it. What copyright owners wanted was a video levy on each blank cassette to compensate the creative community for private, non-commercial copying of their works. Indeed, in many European countries at this time, a video levy is imposed for precisely that purpose.

Fourth, what has to be kept in mind is that the creative community and those who distribute their creative material want the *widest and most spacious distribution* possible. That's the only way that the huge costs of producing a major film can be recouped. Narrow distribution can't work. Wide distribution can.

What Professor Lessig seems to find desirable is unlimited and unmonitored distribution of all creative works, without any regard for retrieving the cost of producing those works. No consumer in America is denied the right of or exiled from the option of watching a movie in a variety of forums (or is it 'fora,' I can never remember) - in theaters, on cable, from satellite, on videocassettes, DVD, over-the-air television; the choices are limitless.

Ah, but each of these environments has boundaries, that is, none of them in an instant, at the click of a key, leaps at the speed of light into the homes or whatever of five-to-six billion people *simultaneously*, without payment to the creators of the work. No sane person is advocating, in Luddite fashion, the destruction of new technology. To the contrary. Creative people and companies are spending millions of dollars to populate the Internet with distribution models to supply the public with yet another viewing option. The Internet is the future, and those who turn away from it are doomed to perpetual anxiety.

But, and that 'but' is an indispensable preface to this truth: Unless you can protect your creative work from being stolen by those who sell it to others, or used by those who don't get permission to use it or compensate the folks who created it and paid for it, you have a huge problem. So when Prof. Lessig and Mr. Peter Jazzi use the word "control," they, perhaps inadvertently, are confused as to how the marketplace for creative works operates. The creative work moves from marketplace segment to marketplace segment domestically and then in foreign countries. One cannot retrieve the cost of making a movie by just exhibiting it in a movie theater, or on cable or satellite. It has to journey through every segment, theaters, cable, Blockbuster-type stores, satellites, television, DVD, etc. praying they can get back their investment money and maybe make a profit.

At some time in the future, when broadband is universal, Internet business models will be deployed. Maybe there'll be a Pay-Per-View site on the Internet (as there is now in cable) wherein a consumer can order a movie, or be part of a Web site much like HBO or Showtime today. There will doubtless be other models as well. A lot of smart people are working hard on these issues.

Finally (what a cheerful word) I am very passionate in my admiration for and defense of creative works and the copyright which armors those works. It may seem to some that the MPAA and I are aggressive in our aims. But we are besieged by those who want to exile, shrink or otherwise collapse copyright, at the very beginnings of this new digital era. We cannot be mute or languid in our response. It is vital, I am persuaded, that we try to inform the public, our critics and objective observers like you of our concerns.

I am more than a bit embarrassed by the length of this letter. I am prattling on too long, much too long. Please forgive me, and thank you for listening.

Cordially,

John Valant